



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/055,870

01/21/2002

Michael Saucier

1895-010

9212

758

7590

07/30/2009

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

OUELLETTE, JONATHAN P

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

07/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL SAUCIER, RAY HALL, and
DENNIS BRANDL

Appeal 2009-004504
Application 10/055,870
Technology Center 3600

Decided:¹ July 29, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Michael Saucier, et al., (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-77 and 84. Claims 78-82 are cancelled. Claims 83 and 85 are withdrawn. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

“The present invention relates to methods, systems and apparatus for interchanging information and/or facilitating transactions in a manufacturing community with manufacturing community members that comprise product brand owners or managers and manufacturing organizations.” Specification [0001].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for facilitating transactions between a product brand manager and manufacturing organizations using a transactional computer system, the method comprising:
 - receiving at the transactional computer system product brand information from the product brand manager, the product brand information including information for manufacturing a product brand;
 - receiving at the transactional computer system from each of the manufacturing organizations information about the manufacturing process capabilities of the manufacturing organization;

² Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed Apr. 15, 2008) and Reply Brief (“Reply Br.,” filed Sep. 25, 2008), and the Examiner’s Answer (“Answer,” mailed Jun. 23, 2008).

determining from the received product brand information and the received information about the manufacturing process capabilities of the manufacturing organizations a set of candidate manufacturing organizations for the product brand, the determination made without providing the product brand information to the manufacturing organizations or the manufacturing process capabilities to the product brand manager; and

providing information about the set of candidate manufacturing organizations to the product brand manager.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Radjy

US 2002/0010525 A1

Jan. 24, 2002

The following rejection is before us for review:

1. Claims 1-77 and 84 are rejected under 35 U.S.C. §103(a) as being unpatentable over Radjy.

ISSUE

Does Radjy disclose or would one of ordinary skill in the art be led to include the step in the method claimed

[D]etermining from the received product brand information and the received information about the manufacturing process capabilities of the manufacturing organizations a set of candidate manufacturing organizations for the product brand, *the determination made without providing the product brand information to the manufacturing organizations or the manufacturing process capabilities to the product brand*

manager.

(claim 1). Emphasis added.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 calls for “receiving ... product brand information including information for manufacturing a product brand.”
2. According to the Specification, “[a] “product brand” as the term is used herein refers broadly to a product to be manufactured or otherwise processed.” Specification [0002].
3. According to the Specification, “a product brand manager as the term is used herein refers broadly to an individual, corporation, business entity or other entity, or groups thereof that has responsibility for, control of, otherwise manages the product brands.” Specification [0004].
4. Claim 1 calls for “receiving . . . from each of the manufacturing organizations information about the manufacturing process capabilities of the manufacturing organization.”
5. According to the Specification, “[a] manufacturing organization as the term is used herein refers broadly to an organization, business, activity, or other entity that undertakes or is capable of undertaking a manufacturing or product processing activity.” Specification [0007].

6. As part of the discussion in the section titled “Description of the Related Art,” the Specification states that “there has been a global trend toward a separation of product brand management or ownership and the means of manufacturing the product brand.” Specification [0006]. *See also* [0008].
7. Furthermore, according to the Specification, “[c]ommunication of the product brand information often poses a risk of that information being compromise[d] or misappropriated. . . . [E.g.,] this typically will result in this sensitive information being placed in the hands of an actual or potential competitor.” Specification [0012].

The scope and content of the prior art

8. Radjy relates to a system for vertically integrating a business via the use of computer and web technologies.
9. Radjy describes a concrete exchange for collecting and publishing information received from concrete manufacturing plants ([0120]) and with which an engineering specifier (AEC) seeking concrete of particular specification ([0129]) may interact.
10. The concrete exchange is a computerized system involving the use of relational databases. ([0058]). The databases include information provided to it by concrete manufacturers.
11. Radjy’s system is an attempt to improve communication between proprietary computer systems ([0120]).
12. Radjy explains that the engineering specifier (AEC) may interact with the concrete exchange in one of two ways. “[If the] AEC is a member of the concrete exchange system, . . . the AEC is free to utilize the concrete exchange system to locate the necessary suppliers for his

concrete on his own” ([0130]).

Alternatively, the AEC may post a request for information (RFI) 514 that is then converted into a concrete exchange-based format 510. Then, a sales or technical services representative 516 from the target (prospective concrete manufacturer) company will preferably contact the AEC to discuss the project. In either the above two ways, the concrete exchange system will help match an AEC with certain concrete specifications to a manufacturer.

Radjy [0131], referring to Fig. 16.

Any differences between the claimed subject matter and the prior art

13. Radjy does not expressly disclose making a determination that does not provide product brand information to manufacturing organizations or manufacturing process capabilities to product brand managers.

The level of skill in the art

14. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent art of facilitating transactions. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (*quoting Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

15. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Obviousness

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

ANALYSIS

The Appellants argued claims 1-77 and 84 as a group (App. Br. 4). We select claim 1 as the representative claim for this group, and the remaining claims 2-77 and 84 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellants’ sole argument is that Radjy does not teach matching brand managers and manufacturing organizations “without providing the

product brand information to the manufacturing organizations or the manufacturing process capabilities to the product brand manager.” *See* Reply Br. 3. *See also* App. Br. 7. According to the Appellants, Radjy discloses “information from one party is being shared with one or more of the other parties, either about production needs or production capabilities.” Reply Br. 3.

Radjy describes a concrete exchange for collecting and publishing information received from concrete manufacturing plants and with which an engineering specifier (AEC) seeking concrete of particular specification may interact. FF 9. The concrete exchange is a computerized system involving the use of relational databases. FF 10. The databases include information provided to it by concrete manufacturers. Radjy does not require concrete manufacturers to divulge information about manufacturing capabilities to the exchange. Radjy’s system is an attempt to improve communication between proprietary computer systems. FF 11. The information about manufacturing capabilities is dictated by the concrete manufacturers. There is no guarantee that manufacturers will provide accurate or complete information. Given, as the Appellants have acknowledged (FF 7), possible concerns over confidentiality, there is every reason to believe that some manufacturers would decline to reveal details about their manufacturing capabilities.

The concrete manufacturing plants Radjy discloses as interacting with the concrete exchange fall within the scope of the claim term “manufacturing organizations” as that term has been defined. FF 5. Also, Radjy’s engineering specifier is someone who has responsibility for managing a product to be manufactured or otherwise processed and therefore falls within the scope of someone who can provide “product

brand” information including information for manufacturing a “product brand,” as the claim term “product brand” has been defined. FF 2-3.

Radjy discloses a scenario whereby the engineering specifier (AEC) does not directly interact with the concrete exchange system for information but rather interacts with a sales or technical services representative of the concrete manufacturer, during which the exchange “will help”. FF 12. In this scenario, the brand manager (i.e., the engineering specifier (AEC)) may or may not be informed about the manufacturing process capabilities of the manufacturing organizations for the desired concrete. Nor is the manufacturing organization guaranteed to be informed of the product brand information. All we know from this scenario is that the brand manager can contact the manufacturing organization for information and that the exchange will help. And even the extent of the help the exchange will give the parties is left unexplained. As we have discussed, Radjy’s system does not require brand managers and manufacturing organizations to reveal confidential information. Accordingly, while helpful, the exchange may be of limited help.

This scenario would cover four possibilities: (1) product brand information is shared with the manufacturing organizations; (2) the manufacturing process capabilities are shared with the product brand manager; (3) both the product brand information and manufacturing process capabilities are shared; and, (4) neither the product brand information nor the manufacturing process capabilities are shared. Given the market pressures during business dealings to keep certain information confidential, one of ordinary skill in the art using Radjy’s system would have good reason to pursue the latter situation. It is that situation the claims are directed to.

But,

[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

KSR, 550 U.S. at 421.

CONCLUSIONS

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1-77 and 84 under 35 U.S.C. §103(a) as being unpatentable over Radjy

DECISION

The decision of the Examiner to reject claims 1-77 and 84 is affirmed.

AFFIRMED

mev

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041